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**MAR 14 2006**

**OFFICE OF PETITIONS**

In re Application of Flemming	:	
Application No. 09/893,501	:	Decision on Petition
Filing Date: June 29, 2001	:	
Attorney Docket No. 26509U	:	

This is a decision on the petition under 37 CFR 1.137(b), filed January 17, 2006, to revive the above-identified application.

The petition is **granted**.

This application became abandoned for failure to timely reply within three months to the final Office action mailed July 6, 2005. A reply was filed on October 5, 2005. An advisory action was mailed November 3, 2005, indicating the reply did not place the application in condition for allowance. An extension of time under the provisions of 37 CFR 1.136(a) was not obtained. Accordingly, this application became abandoned on October 7, 2005.

The instant petition requests revival of the application.

Petitioner has met the requirements to revive the above-identified application pursuant to 37 CFR 1.137(b). Therefore, the petition is granted and the application is revived.

Payment for an extension of time is unnecessary for relief to be granted under 37 CFR 1.137(b). In addition, the Office cannot accept an extension of time fee submitted after the expiration of the maximum extendable time period for reply. Therefore, the \$510 extension of time fee submitted with the petition will be credited to petitioner's deposit account.

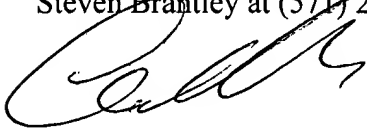
The petition is signed by Gary Nath. Nath was not an attorney or agent of record at the time the application became abandoned. Therefore, it appears that Nath was not in a position to have firsthand or direct knowledge of the facts and circumstances of the delay. Nevertheless, the statement by Nath that the entire delay was unintentional is being treated as having been made as the result of a reasonable inquiry into the facts and circumstances of such delay.<sup>1</sup> In the event that such an inquiry has not been made, petitioner must make such an inquiry. If such inquiry results in the discovery that a portion of the delay from the due date for the reply until the filing

<sup>1</sup> See *Changes to Patent Practice and Procedure*, 62 *Fed. Reg.* at 53160 and 53178; 1203 *Off. Gaz. Pat. Office* at 88 and 103 (responses to comments 64 and 109) (applicant obligated under 37 CFR 10.18 to inquire into the underlying facts and circumstances when providing the statement required by 37 CFR 1.137(b) to the Patent and Trademark Office).

of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional, petitioner must notify the Office.

Technology Center Art Unit 2136 will be informed of the instant decision and the examiner will further review the application in due course.

Telephone inquiries regarding this communication should be directed to Petitions Attorney Steven Brantley at (571) 272-3203.

A handwritten signature in black ink, appearing to read 'C. Brantley', is written over the printed name of Charles Steven Brantley.

Charles Steven Brantley  
Senior Petitions Attorney  
Office of Petitions